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SUBJECT: AMCHAM HCMC SAYS PACE OF REFORM SLOWING

REF: HANOI 1616

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11. (SBU) SUMMARY. Members of the Ho Chi Minh City (HCMC) AmCham Board of Governors (BOG) are united in their sense that Vietnam's forward progress on economic reform has slowed in recent months as the Government of Vietnam (GVN) is in "digestion mode" trying to come to grips with the scope of its WTO commitments. Members suggested this noticeable lull is caused by lack of GVN institutional capacity and, in a few cases, protectionism. Regulations limiting distribution rights and express delivery demonstrate that Vietnam's road to reform will mean rough patches for U.S. business. Broader issues of corruption, opaque land use regulations and human resources also continue to hinder U.S. trade and investment. End Summary.

#### Digesting the Change

12. (SBU) Vietnam seems to be 'pulling in the reins after WTO accession' while the bureaucracy works to implement Vietnam's WTO commitments, AmCham HCMC BOG members told the Consul General on September 5. As a result, U.S. businesses perceive that the Vietnamese bureaucracy is slowing down. Banking applications that had been routine are now taking five to six months and new service and non-tariff barriers (e.g., State Bank of Vietnam and Ministry of Finance measures affecting money supply and liquidity) are squeezing the inflow of capital that U.S. financial services firms rely on. One client applying for a subsidiary license in banking was told that the FVN would prefer that a weaker, less competitive bank enter first. Some companies are finding that their import licenses effectively convey only the right "to pay taxes or duties" before handing their goods over to a local distributor.

#### Trouble on Distribution and Express Delivery

13. (SBU) The director of a prominent legal firm pointed to Ministry of Trade Circular 9 as indicative of a reaction against the brisk pace of reform in recent years. He argued that existing regulations effectively carve out a range of in-house activities that many importers had previously been allowed to conduct (e.g., logistics and marketing) and defines these as services that wholly-owned foreign invested enterprises cannot perform until the WTO phase-in for those services. Various members offered the observation that the authors of Circular 9 appear to have considered only the typical consumer products distribution chain when drafting the regulations even though they apply to all goods, including heavy equipment and hi-technology materials.

14. (SBU) As a result, some companies are being told to stop using their distribution networks, in certain cases potentially forcing companies into breaches of contract. Others are being forced to rely on distribution networks where none was required before. For example, one high-tech industrial chemical importer had routinely received annual ad hoc approval to sell its products directly to the end user in an infrastructure project, but now finds itself cut off from the project without a distribution mechanism. In other cases, such as high-tech finishing materials, alternative distribution systems do not exist. Vietnam's undeveloped distribution networks mean that U.S. chemical companies have resorted to different distribution systems (generally based on personal connections) for State-owned enterprises and private companies.

15. (SBU) Another BOG member referred to the Decree on Delivery Services, which restricts pricing of air express delivery and gives more power to local postal departments to monitor the express delivery industry. Licenses will still be issued by the central government, but provincial postal authorities can now require that the foreign delivery services submit "reports." When one U.S. company asked for clarification about what reports might be required, a provincial official told them "whatever you generally report back to headquarters" -- a wide-ranging interpretation with the potential for serious personal and corporate confidentiality issues.

#### Contributing Factors

16. (SBU) To explain the apparent loss of momentum, BOG members suggested that bureaucratic capacity is a major constraint in the face of booming demand. In the securities sector, nearly one hundred equity funds are applying for securities licenses on which the GVN simply does not have the capacity to act quickly. The thin pool of talent and rapidly increasing staff turnover also act as constraints on virtually every organization in Vietnam. One bank said it needed to increase its expatriate staff from three to 10 just to teach new local hires about

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business systems and processes. Another reported bringing in more expatriate workers due to an absolute inability to find enough highly skilled local staff. BOG members said that the crunch appears to be more acute in HCMC than Hanoi, but the lack of skilled labor is a nationwide problem that is only getting worse. Even the use of expats could be coming under pressure. While a draft circular from Ministry of Labor, Invalids, and Social Affairs proposes increasing the overall number of expatriate workers allowed into Vietnam, it also threatens to tighten restrictions on their activities while in Vietnam.

17. (SBU) BOG members report that last July's cabinet reshuffle and government reorganization has paralyzed some offices. The newly formed Ministry of Culture, Sports, and Information has put its long-anticipated tourism master-plan on the backburner while it sorts itself out, much to the consternation of U.S. companies. Corruption is as big an issue as ever on large infrastructure projects.

18. (SBU) Turning to the trade side of the GVN, the governors see an increasing propensity by some parts of the GVN toward stifling competition that borders on protectionism. While the Ministry of Planning and Investment (MPI) has told AmCham that WTO commitments are a floor, not a ceiling, the Ministry of Industry and Trade (MOIT) takes the opposite approach, using its authority to ensure that Vietnam will only do as much it is committed to in its trade agreements. U.S. business assessed MOIT as increasingly protectionist in its drafting application of new rules, citing Circular 9 as a prime example.

#### Comment:

19. (SBU) The AmCham Ho Chi Minh City Board of Governors (BOG), which represents a broad range of industries, is unified in its assessment that many GVN offices are losing reform momentum.

Many problems, most of which are outside Vietnam's immediate control, contribute to the slow-down. The Trade and Investment Framework Agreement and Bilateral Trade Agreement annual reviews are crucial forums for encouraging further reform. The Support for Trade Acceleration (STAR) project in particular continues to provide much-needed support to government drafting offices. The GVN itself is clearly divided, as reflected in the divergent paths of MPI and MOIT. It is critical, however, that the USG and the American business community here to redouble collaborative efforts to emphasize at all levels that Vietnam needs to meet the spirit and the letter of Vietnam's WTO commitments. End Comment.

¶10. (U) This cable was coordinated with Embassy Hanoi.  
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